

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3359 of 1984

with

SPECIAL CIVIL APPLICATION No 3369 of 1984

with

SPECIAL CIVIL APPLICATION No 5609 of 1984

with

SPECIAL CIVIL APPLICATION No 5610 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KISHORSING HAISING

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 3359 & 3369 of 1984

MR SB NANAVATI for Petitioner

MR HL JANİ for Respondents

2. Special Civil Application No.5609 & 5610 of 1984

None present for Petitioner  
MR HL JANI for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE  
Date of decision: 09/12/97

ORAL JUDGEMENT

Heard learned counsel for the parties. As in all these Special Civil Applications, a common question of law and facts has arisen the same are being taken up for hearing together and are being disposed of by this common order.

2. In these Special Civil Applications, the petitioners having apprehension of termination of their services on the post of Police Constables (Unarmed) approached this Court and this Court has protected the petitioners and for all these years the petitioners are working on the said post. None of the parties to these Special Civil Applications have produced on record of these Special Civil Applications, the order under which the services of the petitioners have been terminated. However, the learned counsel for respondents does not dispute that the termination of services of petitioners has in fact, been ordered. Except in Special Civil Application No.3359 of 1984, reply has not been filed in other Special Civil Applications.

3. Admittedly, all these petitioners were, after being selected for the post of Unarmed Police Constable, sent for training. During the training, it was found that these petitioners were not fulfilling the prescribed height to be possessed by a candidate to be appointed as Police Constable (Unarmed). On that ground only the services of petitioners were terminated. It is necessary to mention here that in all these Special Civil Applications, it has not been stated as a fact by respondents, the shortfall of the petitioners in requisite height to be possessed by a candidate to become eligible for the post of Police Constable (Unarmed).

4. In the case in hand, the contention of learned counsel for respondents is that the Constable (Armed Branch, Unarmed Branch and Women Branch) Recruitment Rules, 1979, under which the recruitment of petitioners have been made on the post of Police Constable (Unarmed), there is no provision which empowers the Police Department to relax the height eligibility.

5. The petitioners were appointed after selection and they are working for all these years in the

Department. Even if it is taken that there is no provision for relaxation in the height eligibility of the candidates to be appointed on the post of Unarmed Police Constable, it is not the case of respondents that the State Government has not such powers. Apart from this, the petitioners are working for all these years on the said post, may be under the Court's order, but this Court cannot be ignorant or oblivious of the fact that they are working on the said post for about 13 years and they have been given appointment after selection. It is not the case that before selection, their height would not have been measured. It is also not the case of respondents that the Police Training School has to examine the height. Normally before giving the appointment the Department has to satisfy itself as to the requisite eligibility to be possessed by the candidates and when the petitioners were selected and sent for training, there is a strong presumption that before sending them for training, the appointing authority would have undergone the process of satisfying itself regarding the minimum eligibility to be possessed by them. There is yet another aspect in the matter. What shortfall is there in the prescribed height eligibility is also not disclosed and over and above that before taking a decision to terminate the services of the petitioners, it appears none of them has been given notice or opportunity of hearing.

6. Taking into consideration the totality of the facts of the case, these Special Civil Applications are allowed and the respondents are restrained from giving effect to the orders of termination of services of the petitioners in these Special Civil Applications. The Home Department, Government of Gujarat, may consider the question of height eligibility of the petitioners sympathetically and pass necessary orders within a period of three months. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)